

110 FERC ¶ 61,187
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suede G. Kelly.

American Electric Power Service Corporation	Docket Nos. ER04-1003-002 ER04-1003-003 ER04-1007-002 ER04-1007-003 ER05-392-000 ER05-394-000 ER05-420-000 ER05-432-000 ER05-450-000
PJM Interconnection, L.L.C.	EL05-62-000

ORDER ACCEPTING AND SUSPENDING REVISED TARIFF SHEETS AND
SERVICE AGREEMENTS SUBJECT TO CONDITIONS AND INSTITUTING
SECTION 206 PROCEEDING

(Issued February 25, 2005)

1. In this order we conditionally accept and suspend American Electric Power Service Corporation's (AEP) December 2, 2004 submittal¹ filed pursuant to a November 1, 2004 unpublished delegated letter order (November 1 Letter Order), and make it effective October 1, 2004, as requested. We also conditionally accept and suspend several service agreements submitted by AEP that are currently pending before the Commission in the above-captioned dockets, grant their requests for waiver, and make them effective on the dates requested. In addition, the Commission is instituting a

¹ In Docket Nos. ER04-1003-002 and ER04-1007-002, AEP submitted its filing (December 2 Filing) on behalf of the AEP east zone operating companies, which are as follows: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company.

proceeding in Docket No. EL05-62-000 pursuant to section 206 of the Federal Power Act (FPA).² This order benefits customers because it ensures that the terms and conditions of jurisdictional service are just and reasonable.

Background

2. On July 9, 2004, in Docket Nos. ER04-1003-000 and ER04-1007-000 (the July 9 filing), AEP filed revised tariff sheets to comply with the Commission's Order No. 2003-A.³ The revised tariff sheets also reflected the change in name of two AEP Operating Companies, Central Power and Light Company, which is now AEP Texas Central Company, and West Texas Utilities Company, which is now AEP Texas North Company. Finally, AEP's revised tariff sheets modified the creditworthiness review provisions for customers serving load in AEP's control area using AEP's transmission facilities.

3. On September 13, 2004, AEP amended its filing to withdraw that portion of the July 9 filing that proposed revisions to the creditworthiness review provisions of the tariff.

4. The November 1 Letter Order stated that, as of October 1, 2004, the AEP east zone operating companies will be providing transmission and interconnection service under PJM Interconnection, L.L.C.'s (PJM) Open Access Transmission Tariff (OATT), not AEP's OATT. The November 1 Letter Order then directed AEP to submit revised tariff sheets for its OATT reflecting only those AEP Operating Companies which are not integrated into PJM.⁴

Proposed Tariff Changes

5. In its December 2 Filing in Docket Nos. ER04-1003-002 and ER04-1007-002, AEP deleted references in the AEP OATT which it stated are no longer applicable to the AEP East Zone. AEP also submitted a new attachment to its OATT – Attachment T, entitled "Interconnection and Local Delivery Service Agreement." Attachment T

² 16 U.S.C. § 824e (2000).

³ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs., ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats & Regs. ¶ 31,171 (2004), *reh'g pending*; *see also Notice Clarifying Compliance Procedures*, 106 FERC ¶ 61,009 (2004).

⁴ *PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,318 (2004).

contains a *pro forma* service agreement containing terms and conditions for delivery services that are not covered under PJM's OATT and the terms and conditions for interconnection of existing and future delivery points. In addition, proposed Attachment T contains terms and conditions for the operation and maintenance of existing and future delivery points. Further, it specifies certain monthly charges for meters, distribution facilities, reactive power demands at the delivery points; clarifies how AEP will coordinate with PJM to facilitate transmission service; and provides a cost-based formula for facility construction, operation and maintenance, and repair work done by AEP or under its direction for system security reasons.

6. On January 4, 2005, AEP supplemented its filing, stating that prior to its integration into PJM the service to be provided under proposed Attachment T was provided under its Network Integration Transmission Service Agreement (NITSA) which allowed negotiated terms and conditions to be included in the NITSA. Additionally, AEP is proposing to maintain an OATT for its east zone operating companies in order to provide delivery services for its customers that are not covered under PJM's OATT and to service existing grandfathered transmission service agreements.

Miscellaneous Service Agreements

7. AEP has also filed several service agreements pursuant to proposed Attachment T. On December 29, 2004, December 30, 2004 and January 13, 2005, AEP submitted for filing Interconnection and Local Delivery Service Agreements under the AEP OATT in Docket Nos. ER05-392-000, ER05-394-000 and ER05-450-000. On January 4, 2005, and January 7, 2005, AEP submitted for filing in Docket Nos. ER05-420-000 and ER05-432-000 executed Letter Agreements (Letter Agreement) to establish new delivery points. The Docket No. ER05-420-000 Letter Agreement serves to integrate the North Bristol, Virginia interconnection delivery point into AEP's North Bristol station. The Docket No. ER05-432-000 Letter Agreement serves to establish a new delivery point at Middleboro, Ohio. AEP requests waiver of the prior notice requirement for all of the agreements filed.⁵

⁵ In Docket No. ER05-392-000, AEP requests waiver for an effective date of December 1, 2004. In Docket No. ER05-394-000, AEP requests waiver for an effective date of November 1, 2004. In Docket No. ER05-420-000, AEP requests waiver for an effective date of November 11, 2004. In Docket No. ER05-432-000, AEP requests waiver for an effective date of November 30, 2004. In Docket No. ER05-450-000, AEP requests waiver for an effective date of January 1, 2005.

Notices of Filings and Pleadings

8. Notice of AEP's December 2 Filing was published in the *Federal Register*, 69 Fed. Reg. 75,521 (2004), with interventions and protests due on or before December 23, 2004. American Municipal Power-Ohio, Inc. (AMP-Ohio) filed a timely motion to intervene and protest.
9. Notice of AEP's supplement was published in the *Federal Register*, 70 Fed. Reg. 3693 (2005) with interventions and protests due on or before January 25, 2004. Buckeye Power, Inc. (Buckeye) filed a timely motion to intervene.
10. Notice of AEP's filing in Docket No. ER05-392-000 was published in the *Federal Register*, 70 Fed. Reg. 1,886 (2005), with interventions and protests due on or before January 19, 2005.
11. Notice of AEP's filing in Docket No. ER05-394-000 was published in the *Federal Register*, 70 Fed. Reg. 3,012 (2005), with interventions and protests due on or before January 21, 2005.
12. Notice of AEP's filing in Docket No. ER05-420-000 was published in the *Federal Register*, 70 Fed. Reg. 3,694 (2005), with interventions and protests due on or before January 25, 2005.
13. Notice of AEP's filing in Docket No. ER05-432-000 was published in the *Federal Register*, 70 Fed. Reg. 3,697 (2005), with interventions and protests due on or before January 31, 2005.
14. Notice of AEP's filing in Docket No. ER05-450-000 was published in the *Federal Register*, 70 Fed. Reg. 4,835 (2005), with interventions and protests due on or before February 4, 2005.
15. There were no filings in response to AEP's various service agreements.

Discussion**Procedural Matters**

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene make AMP-Ohio and Buckeye parties to the proceedings in which they moved to intervene.

Scope of Proceeding

17. In its protest, AMP-Ohio asserts that the filing's scope exceeds the compliance ordered in the November 1 Letter Order and requests that the Commission reject proposed Attachment T.⁶ AMP-Ohio asserts that proposed Attachment T is an entirely new *pro forma* agreement, complete with provisions imposing new charges, a new formula rate and detailed terms and conditions governing various aspects of the relationship between AEP and the interconnecting party.

18. AMP-Ohio further states that the Commission should either reject proposed Attachment T on its merits, since AEP has failed to explain why the service under proposed Attachment T is necessary, or direct AEP to explain why the terms and conditions in proposed Attachment T are not adequately handled in the PJM OATT. AMP-Ohio states that "the Attachment T *pro forma* agreement poses a genuine risk of creating confusion, uncertainty and needless controversy, given its many areas of overlap with matters covered in the PJM OATT." AMP-Ohio points out various provisions which overlap both proposed Attachment T and the PJM OATT, such as the procedures for system impact and facilities studies, and argues that AEP has not provided sufficient justification for proposed Attachment T.

19. We find that proposed Attachment T is necessary to address the need for tariff provisions governing the interconnection of non-generating facilities and delivery service. We will treat AEP's December 2 Filing as a voluntarily-filed section 205 filing. We will conditionally accept and suspend for a nominal period AEP's December 2 Filing in its entirety, and make it effective, subject to refund, on October 1, 2004, as requested. We also will conditionally accept and suspend for a nominal period the aforementioned agreements filed by AEP pursuant to proposed Attachment T, grant the requests for waiver consistent with the November 1 Letter Order and our precedent,⁷ and make them effective, subject to refund, on the dates requested. AEP must file additional information as discussed below to support the proposed terms and conditions for delivery services that are not covered under PJM's OATT.

20. Proposed Attachment T provides a *pro forma* service agreement containing terms and conditions under which AEP will provide service to non-generating entities. The

⁶AMP-Ohio cites *Indiana & Michigan Municipal Distributors Association*, 61 FERC ¶ 61,351 (1992), and *American Electric Power Service Corp.*, 99 FERC ¶ 61,178 (2003).

⁷*Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992); *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *order on reh'g*, 65 FERC ¶ 61,081 (1993).

Commission encourages parties to propose *pro forma* terms and conditions for services offered to their customers, since *pro forma* terms and conditions help to ensure customers are receiving non-discriminatory service, streamline the processing of each request for service by eliminating the need to negotiate individual agreements on a case-by-case basis, enable all parties to see that all requests for service are being treated on a consistent and fair basis, and reduce the filing burden.

21. Since PJM's OATT provides terms and conditions for generator interconnection and AEP is proposing terms and conditions for non-generator interconnections, there should be very little overlap. Nevertheless, the terms and conditions AEP is proposing should not be inconsistent with those in PJM's OATT, since it is now a PJM member. Further, the proposed terms and conditions should be just and reasonable and consistent with current Commission policy.⁸

22. In response to AMP-Ohio's request that AEP explain why the service under proposed Attachment T is necessary, the Commission notes that, under section 4.7 "Connections with Non-Parties," of the PJM Transmission Owners Agreement, PJM members must have an interconnection agreement with each interconnected party that is not a member of PJM.⁹

23. The Commission agrees with AMP-Ohio's assertion that AEP has not provided an adequate demonstration that the proposed terms and conditions are just and reasonable under section 35.13 of the Commission's regulations. The Commission acknowledges that AEP's filing lacks the detail we prefer to see in a section 205 filing. We will not,

⁸ In Order No. 2003, the Commission provided the electric industry with standard terms and conditions for the interconnection of generating facilities based on Commission policy which the Commission had determine just and reasonable. Although Order No. 2003 does not directly apply here, it nevertheless does provide guidance for conducting certain studies and other practices that are used outside the generator interconnection context.

⁹ Section 4.7 states:

No Party shall permit its transmission or distribution facilities to be connected with the facilities of any entity which is not a Party without first having in place an interconnection agreement that contains provisions for the safe and reliable operation of each interconnection in accordance with Good Utility Practice, NERC and MAAC principles, guidelines and standards. Any dispute regarding the adequacy of such agreements shall be resolved by the Office of the Interconnection, subject to the dispute resolution provisions of the Operating Agreement.

however, reject proposed Attachment T, on this basis at this time but will instead require that AEP provide a more in-depth demonstration that the proposed terms and conditions are just and reasonable and are consistent with current Commission policy as required in 18 C.F.R. § 35.13 (2004), within 60 days of the date of this order.

24. Additionally, several sections of proposed Attachment T that differ from the standards established in Order No. 2003 should be better explained. For example: section 2.2.2 “System Impact Study” (SIS) does not state the number of days a customer has to execute and return the SIS along with the deposit. Further, section 2.2.2 requires the customer to make an advance deposit at least equal to one half the expected study costs, but does not cap the deposit and does not state when the customer will be advised of the deposit amount required. The Commission notes that under Order No. 2003, the customer has 30 days to return an executed SIS with a \$50,000 deposit.

25. Also, section 2.2.3 “Facilities Study” (FS) states, “Following the completion of the SIS, AEP shall provide to the Customer a FS Agreement.” Section 2.2.3 does not provide a timeline for when AEP will provide the FS. However, section 2.2.3 states that the customer will execute and return the FS within fifteen business days following its receipt, together with the technical data and a deposit in an amount equal to half of the estimated cost of the FS. The Commission notes that under Order No. 2003, the customer has 30 days to return an executed FS with the required technical data and a deposit of the greater of \$100,000 or the customer’s portion of the estimated monthly cost of conducting the FS.

Pending Agreements

26. AMP-Ohio alleges that AEP has improperly attempted to convince its former transmission customers to execute the agreement before the Commission reviewed the filing. AMP-Ohio requests that the Commission reject proposed Attachment T and instruct AEP that it “must not solicit customers to sign the agreement until the Commission has had a chance to rule on the *pro forma* version thereof.”

27. The Commission disagrees with AMP-Ohio. AEP is not barred from negotiating with its customers for services not yet found to be just and reasonable by the Commission. In doing so, however, both parties -- AEP and the customers -- take the risk that the Commission may not approve part or all of the proposed services, terms and conditions, or rates.

Stakeholder Process

28. AMP-Ohio states that proposed Attachment T is not the product of a “credible stakeholder process.” AMP-Ohio asserts that AEP has failed to identify the customers it consulted, the customer feedback, or whether it has incorporated the customer feedback.

AMP-Ohio goes on to state that this lack of information suggests that proposed Attachment T is a product of AEP's own efforts and requests that the Commission reject it.

29. The Commission continues to encourage parties to work out differences of opinions in any applicable stakeholder process. Most of the ISO's and RTO's tariffs, in fact, require some type of stakeholder process prior to making a filing with the Commission. However, there is no policy, statutory or regulatory requirement to hold a stakeholder process prior to a public utility, such as AEP, making a tariff filing with the Commission. Further, AEP's OATT does not require AEP to hold a stakeholder process prior to making a filing with the Commission. Therefore, we will not reject proposed Attachment T as AMP-Ohio requests.

Public Notice

30. AMP-Ohio states that proposed Attachment T should be rejected since the public was not given adequate notice of AEP's filing. AMP-Ohio alleges that the notice was inadequate and contained no meaningful information.

31. AMP-Ohio received adequate notice of AEP's filing. Notices were published in the *Federal Register*. AMP-Ohio also does not rebut AEP's certification that it served all its transmission customers and the state utility regulatory commissions a copy of its filing letter which would include AMP-Ohio. AEP's filing was also available to the public on the Commission's web site. Further, the Commission notes that AMP-Ohio filed a timely protest on the merits of the AEP filing. Therefore, the Commission finds that AMP-Ohio received adequate notice of AEP's filing.

Section 206 Proceeding

32. Section 205(c) of the Federal Power Act (FPA)¹⁰ provides that a public utility shall "file with the Commission, . . . in such form as the Commission may designate, and shall keep open in a convenient form and place for public inspection schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission." The filings at issue here govern the interconnection of transmission owners that are members of a regional transmission organization (RTO) to non-generating entities. In order to make the agreements filed here readily accessible to interested parties, the Commission believes that such agreements (as well as Attachment T) should properly be designated as related to the PJM OATT, rather than AEP's OATT.

¹⁰16 U.S.C. § 824d(c) (2000).

33. Doing so will promote "one-stop shopping" for customers in the PJM footprint, and will enhance the transparency of the PJM Transmission Owners' operations as well as make it easier to locate these agreements for anyone that wishes to do so. As the Commission moves toward electronic filing,¹¹ moreover, it is important that all agreements relating to an RTO's operations be designated as related to that RTO's OATT. Designation of the agreements as related to that RTO's OATT is not meant to imply, however, that that RTO is responsible for their negotiation, administration and enforcement, or that that RTO is liable in any manner with regard to the agreements. Accordingly, in Docket No. EL05-62-000 the Commission will direct, pursuant to sections 205(c) and 206 of the FPA, that PJM, within 30 days of the date of this order, either designate these agreements as related to its OATT and provide that designation, or show cause why such agreements should not be so designated. Should PJM designate these agreements as related to its OATT and provide that designation, AEP, within 60 days of the date of this order, is directed to refile the agreements with the appropriate designations.

34. Pursuant to section 206 of the FPA, the Commission must establish a refund effective date in a case such as this one that is no earlier than sixty days after the date of publication in the *Federal Register* of notice of the Commission's initiating the proceeding, and no later than five months subsequent to the expiration of the 60-day period. The Commission will establish a refund effective date of 60 days from the date of publication in the *Federal Register* of notice of the Commission's initiating this proceeding.¹² However, the Commission does not see a need for refunds in these circumstances, because any change to the designations would not affect any rates or charges under the agreements. The Commission is also required by section 206 to indicate when it expects to issue a final order; the Commission expects to issue a final order in this proceeding within 180 days of the date of issuance of this order.

The Commission orders:

(A) AEP's December 2 Filing is hereby conditionally accepted in its entirety, suspended for a nominal period, to be effective October 1, 2004, subject to refund and subject to further Commission action both on the compliance filing directed in Ordering Paragraph (D) below and in the section 206 proceeding established by this order, as discussed in the body of this order.

¹¹ See *Electronic Tariff Filings*, Notice of Proposed Rulemaking, 108 FERC ¶ 61,021 (2004) (Docket No. RM01-5-000).

¹² See, e.g., *Canal Electric Company*, 46 FERC ¶ 61,153, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

(B) The agreements filed by AEP pursuant to Attachment T are hereby conditionally accepted for filing, suspended for a nominal period, to be effective on the dates requested, subject to refund and subject to further Commission action both on the compliance filing directed in Ordering Paragraph (D) below and in the section 206 proceeding established by this order, as discussed in the body of this order.

(C) The requests for waiver of the prior notice requirement are hereby granted for the agreements filed by AEP pursuant to Attachment T, as discussed in the body of this order.

(D) AEP is hereby directed to make a compliance filing within 60 days of the date of this order explaining, supporting and demonstrating that the proposed terms and conditions for Attachment T are just and reasonable, as discussed in the body of this order.

(E) AMP-Ohio's request for rejection of the filing is hereby denied, as discussed in the body of this order.

(F) PJM and AEP are directed to make the appropriate filings, as discussed in the body of this order.

(G) The refund effective date in Docket No. EL05-62-000, established pursuant to section 206 of the Federal Power Act, will be 60 days from the date of publication in the Federal Register of notice of the initiation of this proceeding.

(H) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of the proceeding in Docket No. EL05-62-000.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.